

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REVISED PROCEDURAL RULES	DOCKET NO. RMU-05-1
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ORDER COMMENCING RULE MAKING

(Issued January 26, 2005)

Pursuant to the authority of Iowa Code §§ 17A.4, 474.5, and 476.2, the Utilities Board (Board) proposes to adopt the amendments to the Board's administrative rules attached to this order and incorporated by reference. On September 14, 1999, Governor Vilsack issued Executive Orders 8 and 9 that ordered all agencies to review their administrative rules using the criteria of need, clarity, intent, statutory authority, cost, fairness, and whether the rules were consistent with the principles contained in Executive Order 9. Agencies were also required to review any rules routinely waived to determine whether the rules could be redrafted so routine waivers are not necessary.

In response to the Executive Orders, the Board issued an "Order Regarding Plan for Regulatory Review," Docket No. INU-00-1, on February 23, 2000, in which the Board assigned various chapters of its rules to Board staff teams for review. One of the teams reviewed the Board's procedural rules at 199 IAC 7 and sent an initial report with suggested changes to interested members of the public. The report included conceptual ideas for changes to the rules, not actual rule language.

Comments on the report were received from the Iowa Association of Municipal Utilities, the Consumer Advocate Division of the Department of Justice, Qwest Corporation, MidAmerican Energy Company, the Iowa Association of Electric Cooperatives, and the Iowa Telecommunications Association. Alliant Energy filed a statement that it had no substantive comments regarding the report.

Revisions to the initial report were made based on the comments received, and the Board submitted a revised assessment report to the Governor's office for review. The Governor approved the Board's assessment report on September 25, 2002.

The Board considered the assessment report, the comments received on the initial report, and the principles contained in Executive Orders 8 and 9 when drafting the proposed rules that are the subject of this docket. The Board's current chapter 7 rules form the basis of most of the proposed rules. Board rule 1.8, the uniform contested case rules, and the Department of Inspections and Appeals (DIA) contested case hearing rules at 481 IAC 10 were used as the basis of some of the rules.

The current chapter 7 rules combine procedural rules applicable to all cases (unless specifically excluded) and procedural rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives. In its initial report, the team suggested that all rules applying only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives should be moved to a separate chapter. Commenters were supportive of this concept. Therefore, in this rule making, the Board proposes to leave the general procedural rules applicable to all

proceedings, unless specifically excluded, in chapter 7. The Board proposes to move all rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives to new chapter 26 without making any changes to those rules at this time. The Board proposes new rule 26.1 setting forth the scope of the new chapter, but the remaining rules in proposed chapter 26 are the same as in current chapter 7. In this rule making docket, the Board is taking comments only on the proposed chapter 7 rules. It will defer consideration of the chapter 26 rules for a separate rule making docket. In addition, procedural rules applicable only to electric transmission line cases (E dockets) and pipeline permit proceedings (P dockets) will be proposed and considered in a separate rule making docket.

In its initial report, in the interest of clarity and ease of use, the team proposed to rearrange chapter 7 so that the rules would follow the typical time sequence of a contested case proceeding. The commenters were supportive of this concept. Proposed chapter 7 therefore has been completely reorganized according to the chronological order of a typical contested case. All references to rules within the proposed rules have been updated. In addition, current chapter 7 rules combine many different subjects into one rule. In the interest of clarity and ease of use, with as few exceptions as possible, proposed chapter 7 rules deal with one subject per rule. Although proposed chapter 7 appears very different from current chapter 7, most of the changes are grammatical and organizational. In order to aid the public in its review of proposed chapter 7, the Board will attach an outline of the proposed new chapter to this order as Attachment A.

The initial report discussed the need to shorten filing time frames to accommodate cases with short time frames for decision. Commenters were generally opposed to shortening of the filing time frames set out in the Board's rules. However, there are some types of dockets in which a statute requires the board to issue a decision in as short a time as 90 days. The current filing time frames are not workable for these expedited cases. For example, in a 90-day docket under Iowa Code § 476.77, the Board and the parties cannot afford to wait 20 days for an answer to be filed. The Board has reduced time frames in particular cases by order when needed. However, the rules should reflect what is currently being done by order. Shorter time frames are required in these expedited dockets. At the same time, the Board is sensitive to the needs of parties for sufficient time to prepare and file required documents. Therefore, the Board is proposing shortened filing time frames that would apply only to expedited dockets, that is, dockets with a statutory or other deadline of six months or less.

Many commenters to the initial report suggested adopting electronic filing rules. In the assessment report, the Board stated that although it supports the concept of electronic filing, it believes the topic to be beyond the scope of this review, and that electronic filing should be addressed in a separate rule making docket when time and resources permit. The Board continues to support this position. Therefore, the Board is not proposing to adopt electronic filing rules in this docket. However, the Board has occasionally allowed electronic filing of public comments in particular dockets, such as in the comprehensive review of the Board's rules. Therefore,

paragraph 7.4(2)"b" is proposed to allow occasional electronic filing when required or authorized by Board order.

For clarity and ease of use, subrule 1.8(1), relating to communications with the Board, has been repeated in proposed subrule 7.4(2). Subrule 1.8(4) has been moved to proposed chapter 7 because it deals with service and the number of copies required to be filed. The service portion of subrule 1.8(4) has been moved to proposed subrule 7.4(6) and the required number of copies portion of subrule 1.8(4) has been moved to proposed subrule 7.4(4). Additional rules related to the required number of copies, which are currently found throughout chapter 7, have been consolidated into subrule 7.4(4) to make them easier to find.

Although the Board proposed in the assessment report to move its rule relating to public information and confidentiality, rule 1.9, to chapter 7, this has not been proposed in this docket. The application of rule 1.9 is not limited to chapter 7 proceedings. Therefore, the Board proposes a cross-reference in chapter 7 to rule 1.9, rather than moving the rule.

The Board is proposing some substantive changes to the rules. A few rules have been updated to reflect current practice. A few have been proposed for subjects not previously covered, such as the use of prefiled testimony, ex parte communication, and emergency adjudicative proceedings.

One substantive change proposed is to eliminate the distinction between "intervention of right" and "permissive intervention" and make all intervention permissive. The proposed rule retains the recognition that the Consumer Advocate's role as representative of the public generally is not to be interpreted as representing

every potential interest. The generous criteria included for the evaluation of whether intervention should be granted and the Board's practice of freely granting intervention makes the distinction between "intervention of right" and "permissive intervention" academic. No person with a cognizable interest in a Board proceeding has ever been denied permissive intervention, and the "intervention of right" language is unused and superfluous. In addition, the criteria for intervention and the method of intervention are mingled with other subjects in current rule 7.2. Therefore, the Board is proposing rule 7.13, which makes all intervention permissive and includes requirements for both the criteria and the method for intervention.

In addition, the Board proposes to delete the following sentence currently in the intervention rule that states: "The granting of any petition to intervene shall not have the effect of changing or enlarging the issues specified in the presiding officer's notice of hearing, unless the presiding officer orders otherwise." Sometimes intervention does change or enlarge the original issues, and so long as all parties have notice and the opportunity to litigate all issues, there is no due process problem. Additionally, the intervention rule provides that the presiding officer may limit a person's intervention to particular issues or a particular stage of the proceeding and otherwise condition participation, and states that intervenors are bound by previous agreements, arrangements, and orders. These provisions should be sufficient to mitigate any problems that could be created by an intervention in a specific case.

Given the volume of filings with the Board, it is sometimes difficult to quickly identify dockets requiring expedited treatment. Therefore, the Board proposes

subrule 7.4(10) regarding expedited proceedings. This proposed subrule would require a person claiming that a statute or other authority requires expedited treatment to include the phrase "Expedited Proceedings Requested" in the caption of the first pleading. If the person failed to do so, the Board could calculate the timeframe for decision from the filing date of the first pleading in which the phrase is included in the caption. The proposed subrule would also require the person to state the basis for the claim that expedited treatment is required in the first pleading in which the claim is made. The proposed subrule also clarifies that when a statutory or other provision requires the Board to render a decision in a contested case in six months or less, the term "board" is interpreted to mean "presiding officer." "Presiding officer" is defined in proposed rule 7.2 as the board, the administrative law judge, or another person designated by the board for the purposes of a particular proceeding.

Some of the procedures and time frames in current rule 7.8, "appeals to the board from decision of administrative law judge," are not workable, particularly if there is an amendment to the notice of appeal. Therefore, the Board is proposing substantive changes to this rule to make it more functional.

Current rule 7.10 contains a list of purposes for prehearing conferences. Maintaining this list may create the impression that it is a required list, and, perhaps, that it is an exclusive list. Prehearing conferences should be flexible. Therefore, the Board is proposing a generalized rule to recognize that prehearing conferences may be held for any appropriate purpose.

Current subrules 7.2(12) and 7.7(9) relate to information filed in electronic format (electronic files), as opposed to information filed by electronic means

(electronic filing). These rules are outdated and unclear. Therefore, the Board is proposing new rule 7.7, relating to electronic information filed with the Board, and new subrule 7.10, relating to electronic workpapers and exhibits. The rules contain only general information because applicable technology may change frequently. The Board's specific standards for electronic files are referred to in proposed subrule 7.7(3), will be available from the Board's Records and Information Center, and will be published on the Board's website at www.state.ia.us/iub. These standards include such information as the software and media formats the Board uses. The purpose of the standards is to notify the public of these formats so persons can submit electronic information to the Board that is compatible with the Board's systems. The current standards are attached to this order as Attachment B. The proposed rule and standards provide that if a person proposes to submit electronic information that does not comply with the standards, the person should contact the Board's Executive Secretary or General Counsel prior to submission.

Finally, the requirement in the current briefing rule to include a list of legal authority in briefs over 20 pages was deleted because it is not needed.

The Board specifically requests comment as to whether proposed subrule 7.18(2) is used and needed. This subrule contains the requirement currently in the Board's settlement rule that the parties hold a conference after proposal of a settlement not supported by all parties, and that failure to participate in the conference after notice and opportunity is deemed to be waiver of the right to contest the proposed settlement. The Board does not know whether parties use this subrule

and questions whether it is needed. If comments indicate the subrule is not used and not needed, the Board will delete it from the rules when they are adopted.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-05-1, is commenced for the purpose of receiving comments on the proposed rules attached to this order.

2. The Executive Secretary is directed to submit a notice in the form attached to this order and incorporated by reference for publication in the Iowa Administrative Bulletin.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26th day of January, 2005.

RMU-05-1 Chapter 7 Outline

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- 7.4 General information
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- 7.10 Prefiled testimony and exhibits
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- 7.18 Settlements
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 - 7.23(1) Presiding officer
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- 7.24 Reopening record
- 7.25 Interlocutory appeals
- 7.26 Appeals to board from decision of administrative law judge
- 7.27 Rehearing and reconsideration
- 7.28 Stay of agency decision
- 7.29 Emergency adjudicative proceedings

**Iowa Utilities Board
Standards for Electronic Information
Revised January 2005**

As with all official filings, electronic information must be filed at the following address:

Executive Secretary
Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319-0069

Contact the Records and Information Center at the address above or at (515) 281-5563 for an official copy of these standards. Information provided on the web site is for convenience only and is not the official copy.

The Iowa Utilities Board's (IUB) standard operating system is Microsoft (MS) Windows 2000.

The IUB's standard application software is MS Office 2000:

- MS Excel 2000 for spreadsheets and workbooks;
- MS Access 2000 for databases;
- MS Word 2000 for text.

Electronic information should be presented in these formats or in formats that are convertible by these applications without loss of data or functionality.

Databases that do not contain calculations may also be provided in comma delimited format (CSV) and text may be submitted in ASCII or other standard text (TXT) format.

Spreadsheets, workbooks, and databases must include all cell formulae and cell references to allow IUB staff to analyze and reproduce calculations.

All electronic files must be provided in editable form. Any files submitted in portable document format (PDF) must be accompanied by the original files from which the PDF files were created, in native format and including calculations and formulae.

Digital photographs should be submitted in JPG or TIF format.

Compatible media:

- Electronic files should be submitted on IBM-compatible CD-ROM or 3 ½" disk. The IUB is unable to use non-IBM compatible media for data.
- Sound recordings should be submitted on CD-ROM or cassette tape.
- Video recordings should be submitted on VHS tape.

If you propose to submit electronic information that does not comply with these standards, please contact the Executive Secretary or the General Counsel of the Board prior to submission.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4, 474.5, and 476.2 (2003), the Utilities Board (Board) gives notice that on January 26, 2005, the Board issued an order in Docket No. RMU-05-1, In re: Revised Procedural Rules, "Order Commencing Rule Making." The rule making results from the Board's review of its rules pursuant to Executive Orders 8 and 9 issued by Governor Vilsack on September 14, 1999.

On February 23, 2000, the Board issued an order directing staff to review the Board's administrative rules. Staff reviewed the Board's procedural rules applicable to contested case proceedings, investigations, and other hearings in 199 IAC 7 and sent an initial report with suggested changes to interested members of the public. The report included conceptual ideas for changes to the rules, not actual rule language.

Comments on the report were received from the Iowa Association of Municipal Utilities, the Consumer Advocate Division of the Department of Justice, Qwest Corporation, MidAmerican Energy Company, the Iowa Association of Electric Cooperatives, and the Iowa Telecommunications Association. Alliant Energy filed a statement that it had no substantive comments regarding the report.

Revisions to the initial report were made based on the comments received, and the Board submitted a revised assessment report to the Governor's office for review. The Governor approved the Board's assessment report on September 25, 2002.

The Board considered the assessment report, the comments received on the initial report, and the principles contained in Executive Orders 8 and 9 when drafting the proposed rules that are the subject of this docket. The Board's current chapter 7 rules form the basis of most of the proposed rules. Board rule 1.8, the uniform contested case rules, and the Department of Inspections and Appeals (DIA) contested case hearing rules at 481 IAC 10 were used as the basis of some of the rules.

Current chapter 7 rules combine procedural rules applicable to all cases, unless specifically excluded, and procedural rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives. In its initial report, the team suggested that all rules applying only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives be moved to a separate chapter. Commentors were supportive of this concept. Therefore, in this rule making, the Board proposes to leave the general procedural rules applicable to all proceedings, unless specifically excluded, in chapter 7. The Board proposes to move all rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives to new chapter 26 without making any changes to those rules at this time. The Board proposes a new rule 26.1 setting forth the scope of the chapter, but the remaining rules in new chapter 26 are the

same as in current chapter 7. In this rule making docket, the Board is taking comments only on the proposed chapter 7 rules. It will defer consideration of the chapter 26 rules for a separate rule making docket. In addition, procedural rules applicable only to electric transmission line cases (E dockets) and pipeline permit proceedings (P dockets) will be proposed in a separate rule making docket.

Proposed chapter 7 has been completely reorganized according to the chronological order of a typical contested case. All rule references are to the reorganized proposed rules.

The order commencing the rule making contains a discussion of the background and reasons for this proposed rule making and specifically solicits comment whether proposed rule 7.18(2) is used and needed. The order is available on the Board's website at www.state.ia.us/iub.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before March 22, 2005, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on April 26, 2005, in the Board's hearing room at the address listed above.

Rule 7.1(7) contains a waiver provision that refers to the Board's general waiver provision in 199 IAC 1.3, which is applicable to these rules.

These amendments are intended to implement Iowa Code sections 17A.4, 474.5, and 476.2.

The following amendments are proposed.

Item 1. Amend subrule 1.8(4) as follows:

1.8(4) ~~Service of documents.~~

~~*a. Method of service.* Unless otherwise specified, the papers which are required to be served in a proceeding may be served by first-class mail, properly addressed with postage prepaid, or by delivery in person. When a paper is served, the party effecting service shall file with the board proof of service substantially in the form prescribed in board rule 2.2(16) or by admission of service by the party served or his attorney. The proof of service shall be attached to a copy of the paper served. When service is made by the board, the board will attach an affidavit of service, signed by the person serving same, to the original of the paper.~~

~~*b. Date of service.* The date of service shall be the day when the paper served is deposited in the United States mail or is delivered in person.~~

~~*c. Parties entitled to service.* A party or other person filing a notice, motion, or pleading in any proceeding shall serve the notice, motion, or pleading on all other parties. Unless a different requirement is specified in these rules, a party formally filing any such document or any other material with the board shall serve three copies of the document or material on the consumer advocate at the same time~~

~~as the filing is made with the board and by the same delivery method used for filing with the board. "Formal filings" include, but are not limited to, all documents that are filed in a docketed proceeding, or that request initiation of a docketed proceeding. The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0069.~~

~~d. Number of copies. An original and ten copies are required for most filings made with the board. There are some exceptions, which are listed below. The board may request additional copies.~~

~~A = Annual Report (rate regulated 2 copies, non-rate regulated 1 copy)~~

~~G = Complaints (original)~~

~~CCF = Customer Contribution Fund (original + 1 copy)~~

~~E = Electric Franchise or Certificate (original + 3 copies)~~

~~EAC = Energy Adjustment Clause (original + 3 copies)~~

~~GCU = Generating Certificate Utility (original + 20 copies)~~

~~H = Accident (original + 1 copy)~~

~~P = Pipeline Permit (original + 2 copies)~~

~~PGA = Purchased Gas Adjustment (original + 3 copies)~~

~~R = Reports-Outages (original + 1 copy)~~

~~RFU = Refund Filing Utility (original + 3 copies)~~

~~RN = Rate Notification (original + 2 copies)~~

~~TF = Tariff Filing (original + 3 copies)~~

~~e. Upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.~~

Cross reference to service and number of copies. The board's rule regarding service of documents is at 199—subrule 7.4(6). The board's rule regarding number of copies is at 199—subrule 7.4(4).

Item 2. Rescind 199—Chapter 7 and adopt the following new chapters 7 and 26 in lieu thereof:

CHAPTER 7 PRACTICE AND PROCEDURE

199—7.1(17A,476) Scope and applicability.

7.1(1) This chapter applies to contested case proceedings, investigations, and other hearings conducted by a presiding officer, unless excepted below or otherwise ordered by the presiding officer in any proceeding, and subject to special rules or procedures that may be adopted in specific circumstances.

7.1(2) Additional rules applicable only to rate cases, tariff filings, and rate regulation election by rural electric cooperatives are contained in

199—Chapter 26.

7.1(3) With the exception of rules 7.22(17A,476) (ex parte communications), 7.26(17A,476) (appeals from decisions of administrative law judge), and 7.27(17A,476) (rehearing and reconsideration), none of these procedures shall apply to electric transmission line hearings under Iowa Code chapter 478 and 199—Chapter 11 or to pipeline or underground gas storage hearings under Iowa Code chapters 479 or 479B and 199—Chapters 10 and 13. Procedural rules applicable to these proceedings are found in the respective chapters.

7.1(4) Notices of Inquiry Dockets. The board may issue notices of inquiry and establish dockets through which the inquiry can be processed. The procedural rules in this chapter shall not apply to these dockets. Instead, the procedures for a notice of inquiry docket shall be specified in the initiating order and shall be subject to change by subsequent order or ruling by the board or the assigned inquiry docket manager. The procedures may include some or all of these procedural rules.

7.1(5) Reorganizations. Procedural rules applicable to reorganizations are included in 199—32.9(476). In the event the requirements in 199—32.9(476) conflict with the requirements in this chapter, the 199—32.9(476) requirements are controlling.

7.1(6) Discontinuance of service.

a. Scope. This rule applies to discontinuance of utility service pursuant to Iowa Code section 476.20(1), which includes but is not limited to the termination or transfer of the right and duty to provide utility service to a community or part of a community incident to the transfer, by sale or otherwise, except a stock transfer incident to corporate reorganization. This rule does not limit rights or obligations created by other applicable statutes or rules, including, but not limited to, the rights and obligations created by Iowa Code sections 476.22 to 476.26.

b. Application. A public utility shall obtain board approval prior to discontinuance of utility service, except in cases of emergency, nonpayment of account, or violation of rules and regulations. The public utility shall file an application for permission to discontinue service that includes a summary of the

relevant facts and the grounds upon which the application should be granted.

When the discontinuance of service is incident to the transfer of utility property, the transferor utility and the transferee shall file a joint application.

c. Approval. Within 30 days after an application is filed, the board shall approve the application or docket the application for further investigation. Failure to act on the application within 30 days will be deemed approval of the application.

d. Contested cases. Contested cases under paragraph "c" shall normally be completed within four months after date of docketing. Extensions may be ordered for good cause.

e. Criteria. The application will be granted if the board finds discontinuance of service is reasonable and in the public interest, the utility service is no longer necessary, or (in the case of a transfer of service) if the board finds the transferee is ready, willing, and able to provide comparable utility service.

7.1(7) The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise required by law, may be waived by the presiding officer pursuant to 199—1.3(17A,474,476).

199—7.2(17A,476) Definitions. Except where otherwise specifically defined by law:

“Board” means the Iowa utilities board or a majority thereof.

“Complainants” are persons who complain to the board of any act or thing done or omitted to be done in violation, or claimed to be in violation, of any provision of Iowa Code chapter 476 et seq., or of any order or rule of the board.

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a “no factual dispute” contested case under Iowa Code section 17A.10A.

“Data request” means a discovery procedure in which the requesting party asks another person for specified information.

“Expedited proceeding” means a proceeding before the board in which a statutory or other provision of law requires the board to render a decision in the proceeding in six months or less.

“Filed” means received at the office of the board in a manner and form in compliance with the board’s filing requirements.

“Intervenor” means any person who, upon written petition, is permitted to intervene in a specific proceeding before the board.

“Issuance” means the date written on the order unless another date is specified in the order.

“Party” means each person named or admitted as a party.

“Parties” include, but are not limited to, complainants, petitioners, applicants, respondents, and intervenors.

“Person” means as defined in Iowa Code section 4.1(20) and includes individuals and all forms of legal entities.

“Petitioner” means any party who, by written petition, application, or other filing, applies for or seeks relief from the board.

“Presiding officer” means the board, the administrative law judge, or another person so designated by the board for the purposes of a particular proceeding.

“Proposed decision” means the administrative law judge’s or presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case that has been assigned by the board to the administrative law judge or a presiding officer.

“Respondent” means any person against whom a complaint or petition is filed, or who by reason of interest or possible interest in the subject matter of a petition or application or the relief sought therein is made a respondent, or to whom an order is directed by the board initiating a proceeding.

“Service” means service by first-class mail pursuant to subrule 7.4(6), unless otherwise specified.

199—7.3(17A,476) Administrative law judges. Administrative law judges may be designated by the board to preside over contested cases and conduct hearings and shall have the following authority, unless otherwise ordered by the board:

- a. To regulate the course of hearings;
- b. To administer oaths and affirmations;
- c. To rule upon the admissibility of evidence and offers of proof;
- d. To take or cause depositions to be taken;

- e. To dispose of procedural matters, discovery disputes, motions to dismiss, and other motions which may involve final determination of proceedings, subject to review by the board on its own motion or upon application by any party;
- f. To certify any question to the board, in the discretion of the administrative law judge or upon direction of the board;
- g. To permit and schedule the filing of written briefs;
- h. To hold appropriate conferences before, during, or after hearings;
- i. To render a proposed decision and order in a contested case proceeding, investigation, or other hearing, subject to review by the board on its own motion or upon application by any party; and
- j. To take any other action necessary or appropriate to the discharge of duties vested in the administrative law judge, consistent with law and with the rules and orders of the board.

199—7.4(17A,474,476) General information.

7.4(1) Orders of a presiding officer. All orders made by a presiding officer will be issued and filed in the office of the board. Orders of the presiding officer shall be deemed effective upon issuance by the presiding officer unless otherwise provided in the order. Parties and members of the public may view orders in the board's records and information center, and may also view orders (other than orders granting confidential treatment) and a daily summary of filings on the board's web site located at www.state.ia.us/iub.

7.4(2) Communications.

a. All communications to the presiding officer shall be addressed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, unless otherwise specifically directed by the presiding officer. Pleadings and other papers required to be filed with the board shall be filed within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt by the executive secretary in a form that complies with the board's filing requirements. Documents filed with the board shall comply with the requirements in 199—subrule 2.1(3). Persons filing a document with the board must comply with the service requirements in subrule 7.4(6) at the time the document is filed with the board.

b. The board may accept filings electronically from time to time pursuant to instructions that will be delineated in the board order or other official statement authorizing those filings. See rule 7.7(17A,476) for requirements for electronic information filed with the board.

7.4(3) Reference to docket number. All filings made in any proceeding after the proceeding has been docketed by the board shall include on the first page a reference to the applicable docket number(s).

7.4(4) Number of copies.

a. An original and ten copies are required for most initial filings in a docket made with the board. There are some exceptions, which are listed below. The presiding officer may request additional copies.

A = Annual Report (rate regulated 2 copies, non-rate regulated 1 copy)

C = Complaints filed pursuant to 199—6.2(476) (original)

CCF = Customer Contribution Fund (original + 1 copy)

E = Electric Franchise or Certificate (original + 3 copies)

EAC = Energy Adjustment Clause (original + 3 copies)

GCU = Generating Certificate Utility (original + 20 copies)

H = Accident (original + 1 copy)

HLP = Hazardous Liquid Pipeline (original + 2 copies)

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RN = Rate Notification (original + 3 copies)

TF = Tariff Filing (original + 4 copies)

b. Unless otherwise ordered or specified in this rule, parties must file an original and ten copies of all filings, including, but not limited to, pleadings and answers (rule 7.9(17A,476)), prefiled testimony and exhibits (rule 7.10(17A, 476)), motions (rule 7.12(17A,476)), petitions to intervene and responses (rule 7.13(17A,476)), proposals for settlement and responses (rule 7.18(17A,476)), stipulations (rule 7.19(17A,476)), withdrawals (rule 7.21(17A,476)), briefs (subrule 7.23(8)), motions to vacate (subrule 7.23(11)), motions to reopen (rule 7.24(17A,476)), interlocutory appeals (rule 7.25(17A,476)), appeals from decisions of the administrative law judge and responses (rule 7.26(17A,476)),

applications for rehearing and responses (rule 7.27(17A,476)), and requests for stay and responses (rule 7.28(17A,476)).

c. When separate dockets are consolidated into a single case, parties shall file one extra copy for each consolidated docket, in addition to the original and the normally required number of copies. For example, if three separate dockets are consolidated into a single case, parties must file an original plus two copies plus the normally required number of copies of each document.

d. Rule 7.23(17A,476) contains requirements regarding the required number of copies for evidence introduced at hearing and for briefs. Subrule 7.10(5) contains requirements regarding the required number of copies for workpapers and supporting documents.

e. 199—Chapter 26 contains additional requirements regarding the number of copies required to be filed in rate and tariff proceedings.

7.4(5) Defective filings. Only applications, pleadings, documents, testimony, and other submissions that conform to the requirements of an applicable rule, statute, or order of the presiding officer will be accepted for filing. Applications, pleadings, documents, testimony, and other submissions that fail to substantially conform with applicable requirements will be considered defective and may be rejected unless waiver of the relevant requirement has been granted by the presiding officer prior to filing. The presiding officer may reject a filing even though board employees have file-stamped or otherwise acknowledged receipt of the filing. If a filing is defective due only to the number of copies filed, the board's Records and Information Center staff may correct the shortage of copies with the

permission of the filing party and the filing party's agreement to cover all costs of reproduction.

7.4(6) Service of documents.

a. Method of service. Unless otherwise specified by the presiding officer or otherwise agreed to by the parties, documents that are required to be served in a proceeding may be served by first-class mail, properly addressed with postage prepaid, or by delivery in person. When a document is served, the party effecting service shall file with the board proof of service in substantially the form prescribed in 199—subrule 2.2(16) or an admission of service by the party served or the party's attorney. The proof of service shall be attached to a copy of the document served. When service is made by the board, the board will attach a service list with a certificate of service signed by the person serving the document to each copy of the document served.

b. Date of service. Unless otherwise ordered by the presiding officer, the date of service shall be the day when the document served is deposited in the United States mail, is delivered in person, or otherwise as the parties may agree. Although service is effective, the document is not deemed filed with the board until it is received by the board pursuant to subrule 7.4(2).

c. Parties entitled to service. A party or other person filing a notice, motion, pleading, or other document in any proceeding shall contemporaneously serve the document on all other parties. Parties shall serve documents containing confidential information pursuant to a confidentiality agreement executed by the parties, if any. If the parties are unable to agree on a confidentiality agreement,

they may ask the presiding officer to issue an appropriate order. A party formally filing any document or any other material with the board shall serve three copies of the document or material on the consumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. “Formal filings” include, but are not limited to, all documents that are filed in a docketed proceeding, or that request initiation of a docketed proceeding. The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0063.

d. Service upon attorneys. When a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

7.4(7) Written appearance. Each party to a proceeding shall file a separate written appearance, substantially conforming to the form set forth in 199—subrule 2.2(15), identifying one person upon whom the board may serve all orders, correspondence, or other documents. If a party has previously designated a person to be served on the party’s behalf in all matters, filing the appearance will not change this designation, unless the party directs that the designated person be changed in the appearance. If a party files an answer or other responsive pleading containing the information that would otherwise be required in an appearance, filing a separate appearance is not required. The appearance may be filed with the party’s initial filing in the proceeding or may be filed after the proceeding has been docketed.

7.4(8) Representation by attorney at law.

a. Any party to a proceeding before a presiding officer may appear and be heard through a licensed attorney at law. If the attorney is not licensed by the state of Iowa, permission to appear must be granted by the presiding officer. A verified statement that contains the attorney's agreement to submit to and comply with the Iowa Code of Professional Responsibility for Lawyers must be filed with the board and the written appearance of a resident attorney must be provided for service pursuant to Iowa Admission to the Bar rule 31.14(2).

b. A corporation or association may appear and present evidence by an officer or employee. However, only licensed attorneys shall represent a party before a presiding officer in any matter involving the exercise of legal skill or knowledge, except with the consent of the presiding officer. All persons appearing in proceedings before a presiding officer shall conform to the standard of ethical conduct required of attorneys before the courts of Iowa.

7.4(9) Cross reference to public documents and confidential filings. The board's rule regarding public documents and confidential filings is at 199—1.9(22).

7.4(10) Expedited proceedings.

a. When a statutory or other provision requires the board to render a decision in a proceeding in six months or less, the term "board" is interpreted to mean "presiding officer."

b. If a person claims that a statutory or other provision requires the board to render a decision in a contested case in six months or less, the person shall include the phrase "Expedited Proceedings Required" in the caption of the first

pleading filed by the person in the proceeding. If the phrase is not so included in the caption, the board may calculate the timeframe for decision from the filing date of the first pleading in which the phrase is included in the caption.

c. If a person claims that a statutory or other provision requires the board to render a decision in a contested case in six months or less, the person shall state the basis for the claim in the first pleading in which the claim is made.

199—7.5(17A,476) Time requirements.

7.5(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

7.5(2) In response to a request or on its own motion, for good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute.

199—7.6(17A,476) Telephone proceedings. The presiding officer may hold proceedings by telephone conference call in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when locations are determined.

199—7.7(476) Electronic files. This rule applies to all electronic information (electronic files) filed with the board. The presiding officer, on the officer's own motion or at the request of a party, may provide for additional or different requirements in specific cases, if necessary.

7.7(1) Electronic files shall be accompanied by a hard-copy printout and a hard-copy index that identifies each electronic file and includes, for each file, a

brief description of the sources of inputs, operations performed, and where outputs are next used.

7.7(2) Electronic files that are compressed shall be accompanied by software and clear documentation to reverse the process of compression.

7.7(3) Spreadsheets, workbooks, and databases shall include all cell formulae and cell references to allow board staff to analyze and reproduce calculations.

7.7(4) All electronic files shall be provided in editable form. Any files submitted in portable document format (PDF) shall be accompanied by the original files from which the PDF files were created, in native format and including calculations and formulae.

7.7(5) Electronic information shall be filed in accordance with the board's standards for electronic information unless prior arrangements are made. Standards are available from the board's Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319-0069, and may be reviewed on the board's website (www.state.ia.us/iub). If a person proposes to submit electronic information that does not comply with the standards, the person shall contact the Executive Secretary or General Counsel of the board prior to submission. The board may order different requirements and standards for good cause.

199—7.8(17A,476) Procedural schedule and notice of hearing. The presiding officer will issue an order that includes a procedural schedule and notice of hearing. Delivery of the order will be by first-class mail unless otherwise ordered by the presiding officer.

199—7.9(17A,476) Pleadings and answers

7.9(1) Pleadings. Pleadings may be required by statute, rule, or order.

7.9(2) Answers.

a. Unless otherwise ordered by the presiding officer, answers to complaints, petitions, applications, or other pleadings shall be filed with the board within 20 days after the day on which the pleading being answered was served upon the respondent or other party. However, when a statute or other provision requires a presiding officer to issue a decision in the case in six months or less, the answer shall be filed with the board within ten days of service of the pleading being answered, unless otherwise ordered by the presiding officer.

b. Each answer must specifically admit, deny, or otherwise answer all material allegations of the pleadings and also briefly set forth the affirmative grounds relied upon to support each answer.

c. Any party who deems the complaint, petition, application, or other pleading insufficient to show a breach of legal duty or grounds for relief may move to dismiss instead of, or in addition to, answering.

d. A party may apply for a more definite and detailed statement instead of, or in addition to, answering, if appropriate.

e. An answer shall substantially comply with the form prescribed in subrule 199—2.2(8).

7.9(3) Amendments to pleadings. Amendments to pleadings may be allowed upon proper motion at any time during the pendency of the proceeding upon such terms as are just and reasonable.

199—7.10(17A,476) Prefiled testimony and exhibits.

7.10(1) The presiding officer may order the parties to file prefiled testimony and exhibits prior to the hearing. If ordered to do so, parties must file the prefiled testimony and exhibits according to the schedule in the procedural order.

7.10(2) Prefiled testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. If possible, each line should be separately numbered. When a witness who has submitted prefiled testimony takes the stand, the witness does not ordinarily repeat the written testimony or give new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing.

However, the witness may be permitted to correct or update prefiled testimony on the stand and, in appropriate circumstances and with the approval of the presiding officer, may give a summary of the prefiled testimony. If the witness has more than three corrections to make, then the corrections should be filed in written form prior to the hearing.

7.10(3) Parties who choose not to file prefiled testimony and exhibits before the hearing will not necessarily be precluded from participating in the proceedings. However, when a party has evidence to present, and prefiled testimony has been ordered, the evidence must be presented in the form of prefiled testimony and exhibits filed according to the procedural schedule, unless otherwise ordered.

7.10(4) Prefiled testimony and exhibits must be accompanied by an affidavit in substantially the following form: “I, [person’s name], being first duly sworn on

oath, state that I am the same [person's name] identified in the testimony being filed with this affidavit, that I have caused the testimony [and exhibits] to be prepared and am familiar with their contents, and that the testimony [and exhibits] are true and correct to the best of my knowledge and belief as of the date of this affidavit."

7.10(5) Prefiled testimony and exhibits shall include, where applicable:

a. All supporting workpapers.

(1) Unless otherwise ordered by the presiding officer, electronic workpapers in native electronic formats that comply with the standards in rule 7.7(17A,476) shall be provided. Noncompliant electronic workpapers shall be provided as a hard copy with a brief description of software and hardware requirements. Noncompliant electronic copies shall be provided upon request by any party or the presiding officer.

(2) All other workpapers and hard-copy printouts of electronic files shall be clearly tabbed and indexed, and pages shall be numbered. Each section shall include a brief description of the sources of inputs, operations contained therein, and where outputs are next used.

(3) Workpapers' underlying analyses and data presented in exhibits shall be explicitly referenced within the exhibit, including the name and other identifiers (e.g., cell coordinates) for electronic workpapers, volume, tab, and page numbers for other workpapers.

(4) The source of any number used in a workpaper that was not generated by that workpaper shall be identified.

b. The derivation or source of all numbers used in either testimony or exhibits that were not generated by workpapers.

c. Copies of any specific studies or financial literature relied upon or complete citations for them if publicly available.

d. Electronic copies, in native electronic format, of all computer-generated exhibits that comply with the standards in rule 7.7(17A,476). Noncompliant electronic computer-generated exhibits shall be provided as a hard copy with a brief description of software and hardware requirements. Noncompliant electronic copies shall be provided upon request by any party or the presiding officer.

e. Unless otherwise ordered by the presiding officer, the following number of copies shall be filed:

(1) Electronic workpapers - two copies and two hard-copy printouts.

(2) Other workpapers - five copies.

(3) Specific studies or financial literature - two copies.

(4) Computer-generated exhibits - two copies.

7.10(6) If a party has filed part or all of prefiled testimony and exhibits as confidential pursuant to 199—1.9(22), and then later withdraws the claim of confidentiality for part or all of the testimony and exhibits, or if the board denies the request to hold the testimony and exhibits confidential, the party must refile the testimony and exhibits without the confidential stamp on each page.

199—7.11(17A,476) Documentary evidence in books and materials. When documentary evidence being offered is contained in a book, report, or other

document, the offering party should ordinarily file only the material, relevant portions in an exhibit or read them into the record. If a party offers the entire book, report, or other document containing the evidence being offered, the party shall plainly designate the evidence so offered.

199—7.12(17A,476) Motions. Motions, unless made during hearing, shall be in writing, state the grounds for relief, and state the relief or order sought. Motions based on matters that do not appear of record shall be supported by affidavit. Motions shall substantially comply with the form prescribed in 199—subrule 2.2(14). Motions shall be filed and served pursuant to rule 7.4(17A,476). Any party may file a written response to a motion no later than 14 days from the date the motion is filed, unless the time period is extended or shortened by the presiding officer. When a statutory or other provision requires a presiding officer to issue a decision in the case in six months or less, written responses to a motion must be filed within seven days of the date the motion is filed, unless otherwise ordered by the presiding officer. Failure to file a timely response may be deemed a waiver of objection to the motion.

199—7.13(17A,476) Intervention.

7.13(1) Petition. Unless otherwise ordered by the presiding officer, a request to intervene in a proceeding shall be by petition to intervene filed no later than 20 days following the order setting a procedural schedule. However, when a statutory or other provision requires a presiding officer to issue a decision in the case in six months or less, the petition to intervene must be filed no later than ten days following the order setting a procedural schedule, unless otherwise ordered

by the presiding officer. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2(10).

7.13(2) Response. Any party may file a response within seven days of service of the petition to intervene unless the time period is extended or shortened by the presiding officer.

7.13(3) Grounds for intervention. Any person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the presiding officer. In determining whether to grant intervention, the presiding officer shall consider:

- a. The prospective intervenor's interest in the subject matter of the proceeding;
- b. The effect of a decision that may be rendered upon the prospective intervenor's interest;
- c. The extent to which the prospective intervenor's interest will be represented by other parties;
- d. The availability of other means by which the prospective intervenor's interest may be protected;
- e. The extent to which the prospective intervenor's participation may reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument; and
- f. Any other relevant factors.

7.13(4) In determining the extent to which the prospective intervenor's interest will be represented by other parties, the consumer advocate's role of

representing the public interest shall not be interpreted as representing every potential interest in a proceeding.

7.13(5) The presiding officer may limit a person's intervention to particular issues or to a particular stage of the proceeding, or may otherwise condition the intervenor's participation in the proceeding.

7.13(6) When two or more intervenors have substantially the same interest, the presiding officer, in its discretion, may order consolidation of petitions and briefs and limit the number of attorneys allowed to participate actively in the proceedings to avoid a duplication of effort.

7.13(7) A person granted leave to intervene is a party to the proceeding. However, unless the presiding officer rules otherwise for good cause shown, an intervenor shall be bound by any agreement, arrangement, or order previously made or issued in the case.

199—7.14(17A,476) Consolidation and severance.

7.14(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested cases. When deciding whether to consolidate, the presiding officer shall consider: (a) whether the matters at issue involve common parties or common questions of fact or law; (b) whether consolidation is likely to expedite or simplify consideration of the issues involved; (c) whether consolidation would adversely affect the substantial rights of any of the parties to the proceedings; and (d) any other relevant factors.

7.14(2) Severance. The presiding officer may order any contested case or portions thereof severed for good cause.

199—7.15(17A,476) Discovery.

7.15(1) Discovery procedures applicable in civil actions are available to parties in contested cases.

7.15(2) Unless otherwise ordered by the presiding officer or agreed to by the parties, data requests or interrogatories served by any party shall either be responded to or objected to, with concisely stated grounds for relief, within seven days of receipt. When a statutory or other provision requires a presiding officer to issue a decision in the case in six months or less, this time is reduced to five days.

7.15(3) Unless otherwise ordered by the presiding officer, time periods for compliance with all forms of discovery other than those stated in subrule 7.15(2) shall be as provided in the Iowa Rules of Civil Procedure.

7.15(4) Prior to filing any motion related to discovery, parties shall make a good faith effort to resolve discovery disputes without the involvement of the presiding officer.

7.15(5) Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument or other proceedings on the motion.

199—7.16(17A,476) Subpoenas.

7.16(1) Issuance.

a. An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In the absence of good cause for permitting later action, a request for a subpoena must be received at least seven days before the scheduled hearing.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

7.16(2) Motion to quash or modify. Upon motion, the presiding officer may quash or modify a subpoena for any lawful reason.

199—7.17(17A,476) Prehearing conference. An informal conference of parties may be ordered at the discretion of the presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the presiding officer.

199—7.18(17A,476) Settlements. Parties to a contested case may propose to settle all or some of the issues in the case. The presiding officer will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

7.18(1) Proposal of settlements. Two or more parties may by written motion propose settlements for adoption by the presiding officer. The motion shall contain a statement adequate to advise the presiding officer and parties not expressly joining the proposal of its scope and of the grounds on which adoption is urged. Parties may propose a settlement for adoption by the presiding officer at any time.

7.18(2) Conference. After proposal of a settlement that is not supported by all parties, and prior to approval, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing the settlement proposal. Written notice of the date, time, and place shall be furnished at least seven days in advance to all parties to the proceeding. Attendance at any settlement conference shall be limited to the parties to a proceeding and their representatives. A party that has been given notice and opportunity to participate in the conference and does not do so shall be deemed to have waived its right to contest a proposed settlement, unless good cause is shown for the failure to participate.

7.18(3) Comment period. When a party to a proceeding does not join in a settlement proposed for adoption by the presiding officer, the party may file comments contesting all or part of the settlement with the board. Unless otherwise ordered by the presiding officer, the party shall file its comments within 14 days of filing of the motion proposing settlement, and shall serve such comments on all parties to the proceeding at the time of filing. Unless otherwise

ordered by the presiding officer, parties shall file reply comments within seven days of filing of the comments.

7.18(4) Contents of comments. A party contesting a proposed settlement must specify in its comments the portions of the settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests. Any failure by a party to file comments, may, at the presiding officer's discretion, constitute waiver by that party of all objections to the settlement.

7.18(5) Contested settlements. If the proposed settlement is contested, in whole or in part, on any material issue of fact by any party, the presiding officer may schedule a hearing on the contested issue(s). The presiding officer may decline to schedule a hearing where the contested issue of fact is not material or where the contested issue is one of law.

7.18(6) Unanimous proposed settlement. In proceedings where all parties join in the proposed settlement, parties may propose a settlement for adoption by the presiding officer any time after docketing. Subrules 7.18(2) through 7.18(5) shall not apply to a proposed settlement filed concurrently by all parties to the proceeding.

7.18(7) Inadmissibility. Any discussion, admission, concession, or offer to settle, whether oral or written, made during any negotiation on a settlement shall be privileged to the extent provided by law.

199—7.19(17A,476) Stipulations. Parties to any proceeding or investigation may, by stipulation filed with the board, agree upon the facts or law or any portion thereof involved in the controversy, subject to approval by the presiding officer.

199—7.20(17A,476) Investigations. The availability of discovery pursuant to Iowa Code section 17A.13 or the rules of civil procedure shall not be construed to limit the investigatory powers of the board, its representatives, or the consumer advocate.

199—7.21(17A,476) Withdrawals. A party requesting a contested case proceeding may, with the permission of the presiding officer, withdraw that request prior to the hearing.

199—7.22(17A,476) Ex parte communication. Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives shall not communicate directly or indirectly with presiding officers in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. Presiding officers shall not communicate directly or indirectly with parties or their representatives in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate.

199—7.23(17A,476) Hearings.

7.23(1) Presiding officer. The presiding officer presides at the hearing and may rule on motions and issue such orders and rulings as will ensure the orderly conduct of the proceedings. The presiding officer shall maintain the decorum of the hearing and may refuse to admit, may set limits on, or may expel anyone whose conduct is disorderly.

7.23(2) Witnesses. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-

examination. The presiding officer may limit questioning in a manner consistent with law. In appropriate circumstances, the presiding officer may order that witnesses testify as members of a witness panel.

7.23(3) Order of presenting evidence. The presiding officer shall determine the order of the presentation of evidence based on applicable law and the interests of efficiency and justice. Normally, the petitioner shall open the presentation of evidence. In cases where testimony has been prefiled, each witness shall be available for cross-examination on all testimony prefiled by or on behalf of that witness when the witness takes the stand, either alone or as a member of a witness panel.

7.23(4) Evidence.

a. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence, cross-examine witnesses, and present evidence in rebuttal. Ordinarily, prefiled testimony is used in hearings pursuant to rule 7.10(17A,476). Nonsubstantive corrections to prefiled testimony may be made at the beginning of the testimony. However, if more than three corrections need to be made, the sponsoring party shall file corrected prefiled testimony prior to the hearing. The sponsoring party must provide one copy of prefiled testimony and included exhibits to the court reporter.

b. The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with law.

c. Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

d. Unless previously included with prefiled testimony, the party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence shall be appropriately marked and made part of the evidentiary record. If admitted, unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the exhibit to each opposing party, one copy for each presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered.

e. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with the permission of the presiding officer, present the testimony. The presiding officer may require the offering party to file a written statement of the excluded oral testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record. Unless previously included with prefiled testimony, the sponsoring party must provide at least one copy of the document or exhibit to each opposing party, one copy for each presiding officer, one copy for the witness (if any), one copy for the court reporter, and two copies for board staff, unless otherwise ordered.

7.23(5) Objections. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. All objections shall be timely made on the record and state the grounds relied on.

The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.23(6) Further evidence. At any stage during or after the hearing, the presiding officer may order a party to present additional evidence and may conduct additional proceedings as appropriate.

7.23(7) Participation at hearings by non-parties. The presiding officer may permit any person to be heard and to examine and cross-examine witnesses at any hearing, but such person shall not be a party to the proceedings unless so designated. The testimony or statement of any person so appearing shall be given under oath and such person shall be subject to cross-examination by parties to the proceeding, unless the presiding officer orders otherwise.

7.23(8) Briefs.

a. Unless waived by the parties with the consent of the presiding officer, the presiding officer shall set times for the filing and service of briefs. Unless otherwise ordered by the presiding officer initial briefs shall be filed simultaneously by all parties and reply briefs shall be filed simultaneously.

b. Unless otherwise ordered, parties shall file an original and ten copies of briefs with the board and shall serve two copies of briefs on the other parties pursuant to subrule 7.4(6). Three copies of briefs shall be served on the consumer advocate pursuant to subrule 7.4(6).

c. Initial briefs shall contain a concise statement of the case. Arguments based on evidence introduced during the proceeding shall specify the portions of the record where the evidence is found. Initial briefs shall include all arguments

the party intends to offer on brief in support of its case and against the record case of the adverse party or parties. Unless otherwise ordered, a reply brief shall be confined to refuting arguments made in the brief of an adverse party. Unless specifically ordered to brief an issue, a party's failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the presiding officer from deciding the issue on the basis of evidence appearing in the record.

d. Every brief of more than 20 pages shall contain on its front leaves a table of contents with page references. Each party's initial brief shall not exceed 90 pages and each subsequent brief shall not exceed 40 pages, exclusive of the table of contents. A brief that exceeds these page limits shall be deemed a defective filing and may be rejected as provided in subrule 7.4(5). Pursuant to 199—1.3(17A,474,476), the presiding officer may grant a waiver of these page limits. Waiver may be granted ex parte.

e. Briefs shall comply with the following requirements.

(1) The size of pages shall be 8½ by 11 inches.

(2) All printed matter must appear in at least 11-point type.

(3) There shall be margins of at least one inch on the top, bottom, right, and left sides of the sheet.

(4) The body of the brief shall be double-spaced.

(5) Footnotes may be single-spaced but shall not exceed one-half page in length.

(6) The printed matter may appear in any pitch, as long as the characters are spaced in a readable manner. Any readable font is acceptable.

7.23(9) Oral arguments. The presiding officer may set a time for oral argument at the conclusion of the hearing, or may set a separate date and time for oral argument. The presiding officer may set a time limit for argument. Oral argument may be either in addition to or in lieu of briefs. Unless specifically ordered to argue an issue, a party's failure to address an issue in oral argument shall not be deemed a waiver of the issue.

7.23(10) Record. The record of the case is maintained in the board's records and information center at the office of the board. Unless held confidential pursuant to 199—subrule 1.9(22), parties and members of the public may examine the record and obtain copies of documents other than the transcript. The transcript will be available for public examination, but copying of the transcript may be restricted by the terms of the contract with the court reporting service.

7.23(11) Default.

a. If a party fails to appear at a hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Default decisions or decisions rendered on the merits after a party has failed to appear at a hearing are final agency action unless otherwise ordered by the presiding officer. However, within 15 days after the date of notification or mailing of the decision, a motion to vacate may be filed and served on all parties. The motion to vacate must state all facts relied on by the moving party that show good cause existed for that party's failure to appear at the hearing. The stated

facts must be substantiated by affidavit attached to the motion. Unless otherwise ordered, adverse parties shall have ten days to respond to a motion to vacate. If the decision is rendered by an administrative law judge, the board may review it on the board's own motion within 15 days after the date of notification or mailing of the decision.

c. The time for appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. Properly substantiated and timely filed motions to vacate shall be granted for good cause shown. The burden of proof as to good cause is on the moving party. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

e. An administrative law judge's decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case. An administrative law judge's decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 7.25(17A,476).

f. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall schedule another hearing and the contested case shall proceed accordingly.

g. A default decision may award any relief consistent with the record in the case. The default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take

effect immediately, subject to an appeal pursuant to rule 7.26(17A,476), or a request for stay pursuant to rule 7.28(17A,476).

199—7.24(17A,476) Reopening record. The presiding officer, on its own motion or on the motion of a party, may reopen the record for the reception of further evidence. When the record was made before the board, a motion to reopen the record may be made any time prior to the issuance of a final decision. When the record was made before an administrative law judge, a motion to reopen the record shall be made prior to the expiration of the time for appeal from the proposed decision, and shall stay the time for filing an appeal. A motion to reopen the record shall substantially comply with the form prescribed in 199—subrule 2.2(12). Affidavits of witnesses who will present new evidence shall be attached to the motion and shall include an explanation of the competence of the witness to sponsor the evidence and a description of the evidence to be included in the record.

199—7.25(17A,476) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge. In determining whether to do so, the board may consider the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the administrative law judge would provide an adequate remedy. Any request for interlocutory review must be filed within ten days of issuance of the challenged

order, but no later than the time for compliance with the order or ten days prior to the date of hearing, whichever is first.

199—7.26(17A,476) Appeals to board from decision of administrative law judge.

7.26(1) Notification of proposed decision. A copy of the administrative law judge's proposed decision and order in a contested case shall be sent by first-class mail, on the date the order is issued, to the last known address of each party. The decision shall normally include "Proposed Decision and Order" in the title and shall inform the parties of their right to appeal an adverse decision and the time in which an appeal must be taken.

7.26(2) Appeal from proposed decision. A proposed decision and order of the administrative law judge in a contested case shall become the final decision of the board unless, within 15 days after the decision is issued, the board moves to review the decision or a party files an appeal of the decision with the board. The administrative law judge may shorten the time for appeal if no party objects, no written objections were filed in the case, and there are no issues that indicate a need for the 15-day appeal time.

7.26(3) Any adversely affected party may appeal a proposed decision by timely filing a notice of appeal. The appellant shall file an original and ten copies of the notice of appeal with the board, provide a copy to the administrative law judge, and simultaneously serve a copy of the notice pursuant to subrule 7.4(6) on all parties.

7.26(4) The board shall not consider any claim of error based on evidence which was not introduced before the administrative law judge. Newly discovered material evidence must be presented to the administrative law judge pursuant to a motion to reopen the record.

7.26(5) Contents of notice of appeal. The notice of appeal shall include the following in separately numbered paragraphs supported, where applicable, by controlling statutes and rules.

- a. A brief statement of the facts.
- b. A brief statement of the history of the proceeding, including the date and a description of any ruling claimed to be erroneous.
- c. A statement of each of the issues to be presented for review.
- d. A precise description of the error(s) upon which the appeal is based. If a claim of error is based on allegations that the administrative law judge failed to correctly interpret the law governing the proceeding, exceeded the authority of an administrative law judge, or otherwise failed to act in accordance with law, the appellant shall include a citation to briefs or other documents filed with the administrative law judge where the legal points raised in the appeal were discussed. If a claim of error is based on allegations that the administrative law judge failed to give adequate consideration to evidence introduced at hearing, the appellant shall include a citation to pages of the transcript or other documents where the evidence appears.
- e. A precise statement of the relief requested.

f. A statement as to whether an opportunity to file a brief or make oral argument in support of the appeal is requested and, if an opportunity is sought, a statement explaining the manner in which briefs and arguments presented to the administrative law judge are inadequate for purposes of appeal.

g. Certification of service showing the names and addresses of all parties upon whom a copy of the notice of appeal was served.

7.26(6) Responsive filings and cross-appeals. If parties wish to respond to the notice of appeal, or file a cross-appeal, they must file the response or notice of cross-appeal within 14 days after the filing of the notice of appeal, unless otherwise ordered by the board. When a statutory or other provision requires a presiding officer to issue a decision in the case in less than six months, the response or cross-appeal must be filed within seven days of filing the notice of appeal.

a. Responses shall specifically respond to each of the substantive paragraphs of the notice of appeal and shall state whether an opportunity to file responsive briefs or to participate in oral argument is requested.

b. Parties who file a cross-appeal must comply with the requirements for filing a notice of appeal contained in this rule.

7.26(7) Ruling on appeal. After the filing of the last appeal, response, or cross-appeal, the board shall issue an order that may establish a procedural schedule for the appeal or may be the board's final decision on the merits of the appeal.

199—7.27(17A,476) Rehearing and reconsideration.

7.27(1) Application for rehearing or reconsideration. Any party to a contested case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the contested case is issued.

7.27(2) Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included. An application shall substantially comply with the form prescribed in 199—subrule 2.2(13).

7.27(3) Requirements for objections to applications for rehearing or reconsideration. Notwithstanding the provisions of subrule 7.9(2), an answer or objection to an application for a rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board. The answer or objection to the application shall substantially comply with the form prescribed in 199—subrule 2.2(8).

199—7.28(17A,476) Stay of agency decision.

7.28(1) Any party to a contested case proceeding may petition the board for a stay or other temporary remedy pending judicial review of the proceeding. The

petition shall state the reasons justifying a stay or other temporary remedy and be served on all other parties pursuant to subrule 7.4(6).

7.28(2) In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5)(c).

7.28(3) A stay may be vacated by the board upon application of any party.

199—7.29(17A,476) Emergency adjudicative proceedings.

7.29(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue an emergency adjudicative order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency adjudicative order, the board may consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to provide reasonably reliable information under the circumstances;
- b. Whether the specific circumstances that pose immediate danger to the public health, safety, or welfare are likely to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

7.29(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the board's discretion, to justify the determination of an immediate danger and the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by the most reasonably available method, which may include one or more of the following methods: personal delivery; certified mail; first-class mail; fax; or email. To the degree practical, the board shall select the method or methods most likely to result in prompt, reliable delivery.

c. Unless the written emergency adjudicative order is delivered by personal service on the day issued, the board shall make reasonable efforts to contact the persons who are required to comply with the order by telephone, in person, or otherwise.

7.29(3) Completion of proceedings. Issuance and delivery of a written emergency adjudicative order will normally include notification of a procedural schedule for completion of the proceedings.

This chapter is intended to implement Iowa Code sections 17A.4, 474.5, and 476.2.

CHAPTER 26

RATE CASES, TARIFFS, AND RATE REGULATION ELECTION

PRACTICE AND PROCEDURE

199—26.1(17A,476) Scope and applicability.

26.1(1) This chapter contains procedural rules applicable only to rate cases, tariff filings, and rate regulation election by electric cooperatives. The board's general contested case procedural rules that also apply to these types of proceedings are contained at 199—Chapter 7.

26.1(2) The purpose of these rules is to facilitate the transaction of business before the board and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise required by law, may be waived by the board pursuant to 199—1.3(17A,474,476).

199—26.2(17A,476) Defective filings. No application, pleading, document, testimony or other submission filed with a tariff incorporating changes in rates, charges, schedules, or regulations for public utility service shall be rejected as defective under this rule after the date of a board order docketing investigation of the tariff as a formal proceeding.

199—26.3(17A,476) Proposal of settlements. In proposed settlements which resolve all revenue requirement issues in a rate case proceeding, parties to the settlement shall jointly file the revenue requirement calculations reflecting the adjustments proposed to be settled. In proposed settlements which resolve some revenue requirement issues in a rate case proceeding and retain some issues for litigation, each party to the settlement who has previously filed a

complete revenue requirement calculation shall file its revenue requirement calculation reflecting the adjustments proposed to be settled and any remaining issues to be litigated. In proposed settlements which produce an agreed-upon revenue requirement as a mutually acceptable outcome to the proceeding without an agreement on each revenue requirement issue, parties to the settlement shall jointly file schedules reflecting the specific adjustments for which the parties reached agreement. For those issues included in the proposed settlement which were not specifically resolved, the schedules should identify the range between the positions of the parties.

199—26.4(476) Rate case expense.

26.4(1) A utility making an application pursuant to Iowa Code section 476.6 shall file, within one week of docketing of the rate case, the estimated or, if available, actual expenses incurred or to be incurred by the utility in litigating the rate case. Except for expenses incurred in preparation of the rate filing and notification of customers, the expenses shall be limited to expenses incurred in the time period from the date the initial application is filed through the utility's reply brief. Each expense shall be designated as either estimated or actual.

26.4(2) Estimated or, if available, actual expenses shall identify specifically:

a. Printing costs for the following:

- (1) Rate notification letters
- (2) Initial filing
- (3) Testimony
- (4) Briefs

(5) Other (specify)

b. Postage costs

c. Outside counsel cost

(1) Number of attorneys engaged as outside counsel

(2) Hours

(3) Cost/hour

d. Outside expert witness/consultant

(1) Number of outside consultants employed

(2) Hours per consultant employed

(3) Cost/hour per consultant employed

e. Expenses stated by individual for both outside consultants and utility

personnel

(1) Travel

(2) Hotel

(3) Meals

(4) Other (specify)

f. Other (specify)

26.4(3) Rate case expense shall not include recovery for expenses that are otherwise included in test year expenses, including salaries for staff preparing filing, staff attorneys, and staff witnesses. Rate case expense shall include only expenses not covered by test year expenses for the period stated in subrule 26.4(1).

26.4(4) Total allowable rate case expense shall include expenses incurred by board staff and the consumer advocate for the time period stated in subrule 26.4(1). The rate case expense to be filed by the utility shall not include these expenses.

26.4(5) The reasonableness of the estimates shall be litigated during the proceeding. At the request of the consumer advocate or the utilities board, company shall make witnesses available on any item included in the estimated rate case expense for cross-examination during the hearing.

26.4(6) Actual utility expenses shall be filed in the same format and detail as estimated expenses and shall be filed within two weeks after filing the final brief. All material variances shall be fully supported and justified.

26.4(7) The board may schedule any additional hearings to litigate the reasonableness of the final expenses.

This rule is intended to implement Iowa Code section 476.6(8).

199—26.5(476) Applications and petitions.

26.5(1) Customer notification procedures.

a. Definitions. Terms not otherwise defined in these rules shall be understood to have their usual meaning.

(1) “Rates” shall mean amounts per unit billed to customers for a recurring service or commodity rendered or offered by the public utility. “Rate amounts” shall mean the total bill rendered to a customer pursuant to a given rate schedule.

(2) "Charges" shall mean amounts billed to customers for a nonrecurring service or commodity rendered or offered by the public utility.

(3) "Commodity" or "commodities" shall mean water, electricity, or natural gas.

(4) "Effective date" shall mean the date on which the first customer begins receiving the service or commodity under the new rate or charge.

b. Notification of customers. All public utilities, except those exempted from rate regulation by Iowa Code section 476.1 which propose to increase rates or charges, shall mail or deliver a written notice pursuant to paragraph "c" or "d" to all customers in all affected rate classifications. The written notice shall be mailed or delivered before the application for increase is filed, but not more than 62 days prior to the filing. Any public utility exempt from rate regulation by Iowa Code section 476.1, which proposes to increase rates or charges, shall mail or deliver, not less than 30 days prior to the proposed effective date, a written notice pursuant to paragraph "c" or "d" of the rate or charge increase to all customers in all affected rate classifications.

Provided, however, that if a telephone utility is proposing to increase rates for only interexchange services, excluding EAS and intrastate access services, the utility shall cause the notice of proposed increase to be published, in at least one newspaper of general circulation in each county where such increased rates are proposed to be effective. The notice shall be published at least twice in such newspaper no more than 62 days prior to the time the application for the increase is filed with the board.

c. Standardized notice.

(1) Rate-regulated utilities. Any rate-regulated utility company may use the following forms for notification of its customers without seeking prior board approval. If the utility is asking for a general and interim increase, it should use Form A below. If the utility is asking for only a general increase, it should use Form B below.

Form A

Dear Customer:

(Company Name) (We) are asking the Iowa Utilities Board for an increase in (type of service) utility (rates) (and) (charges) with a proposed effective date of (date).

The proposed increase in annual revenues will be approximately \$(number), or (number)%.

Although the effect of the proposed increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges)	Current (Charge)				Proposed (Charge)	
(Customer Class)	(Monthly Rate)	+	Proposed Increase	=	(Monthly Rate)	Percentage Increase

This proposed increase in (rates) (and) (charges) may be docketed by the Board, which suspends the effective date of the proposed (rates) (and) (charges). If the proposed (rates) (and) (charges) are suspended, we are asking

the Board for temporary authority to place into effect the following interim increase (collected subject to refund), to be effective (date). The Board may set interim (rates) (and) (charges) other than these:

Proposed Interim Rate Increase

(Charges) (Customer <u>Class</u>)	Current (Charge) (Monthly <u>Rate</u>)	+	Proposed <u>Increase</u>	=	Proposed (Charge) (Monthly <u>Rate</u>)	Percentage <u>Increase</u>
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After a thorough investigation, the Board will order final (rates) (and) (charges) which may be different from those proposed, and determine when the (rates) (and) (charges) will become effective. If the final (rates) (and) (charges) are lower than the interim (rates) (and) (charges), the difference between the final and interim (rates) (and) (charges) will be refunded with interest.

You have the right to file a written objection to this proposed increase with the Board and to request a public hearing. The address of the Board is: Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The Board should be provided with any facts that would assist it in determining the justness and reasonableness of this requested increase. This information will be made available to the Consumer Advocate, who represents the public interest in rate cases before the Board.

A written explanation of all current and proposed rate schedules is available without charge from your local business office. If you have any questions, please contact your local business office.

Form B

Dear Customer:

(Company Name) (We) are asking the Iowa Utilities Board for an increase in (type of service) utility (rates) (and) (charges) with a proposed effective date of (date).

The proposed increase in annual revenues will be approximately \$(number), or (number)%.

Although the effect of the proposed increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges)	Current			Proposed	
	(Charge)			(Charge)	
<u>(Customer Class)</u>	<u>(Monthly</u>	Proposed		<u>(Monthly</u>	Percentage
	<u>Rate)</u>	+ <u>Increase</u>	=	<u>Rate)</u>	<u>Increase</u>

This proposed increase in (rates) (and) (charges) may be docketed by the Board, which suspends the effective date of the proposed (rates) (and) (charges). After a thorough investigation, the Board will order final (rates) (and) (charges) which may be different from those we requested. These final (rates) (and) (charges) will become effective at a date set by the Board.

You have the right to file a written objection to this proposed increase with the Board and to request a public hearing. The address of the Board is Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The Board should be provided with any facts that would assist it in determining the justness and

reasonableness of this requested increase. This information will be available to the Consumer Advocate, who represents the public interest in rate cases before the Board.

A written explanation of all existing and proposed rate schedules is available without charge from your local business office. If you have any questions, please contact your local business office.

(2) Utilities not subject to rate regulation. A utility not subject to rate regulation may use the following form for notification of its customers without seeking prior board approval.

Dear Customer:

On (date), (responsible party) approved an increase in (rates) (and) (charges) affecting prices for (type of service) that you receive. The increase will apply to your usage beginning on (date).

The increase in annual revenues will be approximately \$(number), or (number)%.

Although the effect of the increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges)	Current				(Charge)	
<u>(Customer Class)</u>	<u>(Monthly</u>	<u>Proposed</u>	=	<u>(Monthly</u>	<u>Percentage</u>	
	<u>Rate)</u>	<u>Increase</u>		<u>Rate)</u>	<u>Increase</u>	

A written explanation of all current rate schedules is available without charge from our local business office. If you have any questions, please contact our business office.

(3) General requirements for a form notice. The standardized notice provided under this subsection shall be of a type size and of a quality which is easily legible. A copy of the notice with dates, cost figures, and cost percentages shall be filed with the board at the time of customer notification.

Any utility offering services or systems involving detailed rate schedules must include in its notification to customers a paragraph specifically noting the services or systems for which any increase is proposed and advising customers to contact the utility's local business office for further explanation of the increase.

Any "average" used in the standard form shall be a median average.

d. Other customer notification forms.

(1) Prior approval. Any public utility, as defined in Iowa Code section 476.1, which proposes to increase rates or charges and is not in substantial compliance with the form prescribed in 26.5(1)"c" above, shall submit to the board not less than 30 days before providing notification to its customers in accordance with 26.5(1)"b," ten copies of such proposed notice for approval. The board, for good cause shown, may permit a shorter period for approval of the proposed notice.

(2) Form. The proposed notice as submitted to the board pursuant to 26.5(1)"d"(1) may contain blank spaces for dates, cost figures and cost percentages; however, a copy of the approved notice with dates, cost figures, and cost percentages shall be filed with the board at the time of the customer

notification. The form of the notice, as approved by the board, may not be altered in the final form except to include dates, cost figures, and cost percentages reflecting the latest updates. The notice shall be of a type size and of a quality which is easily legible and shall be of the same format as that which was approved by the board.

(3) Required content of notification. The notice submitted for approval pursuant to 26.5(1)"d"(1) shall include, at a minimum, all of the information contained in the standard notice of 26.5(1)"c."

(4) Notice of deficiencies. Within 30 days of the proposed notice's filing, the utility shall be notified of either the approval of the notice or of any deficiencies in the proposed notice. In the event deficiencies are found to exist in the proposed notice, the board will describe the corrective measures necessary to bring the notice into compliance with Iowa Code chapter 476 and board rules. A notice found to be deficient under this rule shall not constitute adequate notice under Iowa Code section 476.6.

(5) Fuel adjustment clause. Nothing in this subsection shall be taken to prohibit a public utility from establishing a sliding scale of rates and charges or from making provision for the automatic adjustment of rates and charges for public utility service, provided that a schedule showing such sliding scale or automatic adjustment of rates and charges is first filed with the board. Such adjustment factors that result from the sliding scale shall be printed on the customer's bill.

e. Reserved.

f. Delivery of notification.

(1) The notice, as it appears in 26.5(1)"c" or as approved by the board in accordance with 26.5(1)"d," shall be mailed or delivered to all affected customers pursuant to the timing requirements of 26.5(1)"b."

(2) Rate-regulated utilities. Notice of all proposed increases may be mailed to all affected customers. The notice may be mailed with a regularly scheduled mailing of the utility. Notice, except for proposed nonrecurring service charge increases, shall be conspicuously marked, "Notice of proposed rate increase," on the notice itself. If a separate mailing is utilized by a utility for customer notification except for proposed nonrecurring service charge increases, the outside of the mailing shall also be conspicuously marked, "Notice of proposed rate increase."

(3) Utilities not subject to rate regulation. Notice of all increases may be mailed to all affected customers. The notice may be mailed with a regularly scheduled mailing of the utility. Notice of all increases, except nonrecurring service charge increases, shall be conspicuously marked, "Notice of rate increase," on the notice itself. If a separate mailing is utilized by a utility for customer notification of an increase, except a nonrecurring service charge increase, the outside of the mailing shall also be conspicuously marked, "Notice of rate increase." This subparagraph does not apply to municipal utilities.

(4) Failure of the postal service to deliver the notice to any customers shall not invalidate or delay a proposed rate increase proceeding.

(5) After the date the first notice is mailed or delivered to any affected customer and until such rates are resolved in proceedings before the board, any person who requests service and is affected by the proposed increase in rates shall receive a notice specified in paragraph 26.5(1)"b" not later than 60 days after the date of commencement of service to the customer.

(6) Approved notice will be required for each filing proposing an increase that is not directly identifiable with a previous customer notification.

(7) This subrule shall not apply to telephone utilities proposing to increase rates for only interexchange services, excluding EAS and intrastate access services.

26.5(2) Applications filed in accordance with the provisions of Iowa Code section 476.7.

a. Any rate-regulated public utility filing an application with the board requesting a determination of the reasonableness of its rates, charges, schedules, service, or regulations shall submit at the time the application is filed, factual evidence and written argument offered in support of its filing and provided that the public utility is not a rural electric cooperative, it shall also submit affidavits containing testimonial evidence in support of its filing for a general rate increase. All such testimony and exhibits shall be given or presented by competent witnesses, under oath or affirmation, at the proceeding ordered by the board as a result of the application, and the proceeding itself shall be governed by the applicable provisions of 199—Chapter 7(17A,476) and rule 26.4(476).

b. All of the foregoing requirements shall likewise apply in the event the board shall, on its own motion, initiate a formal proceeding to determine the reasonableness of a public utility's rates, charges, schedules, service, or regulations.

199—26.5(3) Tariffs to be filed. A rate-regulated public utility shall not make effective any new or changed rate, charge, schedule, or regulation until it has been approved by the board and the board has determined an effective date, except as provided in Iowa Code section 476.6, subsections 11 and 13. If the proposed new or changed rate, charge, schedule, or regulation is neither rejected nor approved by the board, the board will docket the tariff filing as a formal proceeding within 30 days after the filing date. Proposed new or changed rates, charges, schedules, or regulations which contain energy efficiency expenditures and related costs which are incurred after July 1, 1990, for demand-side programs shall not be included in a rate-regulated utility's proposed tariff which relates to a general increase in revenue. A utility may propose to recover the costs of process-oriented industrial assessments not related to energy efficiency as defined in rule 199—35.2(476). The filing is not a contested case proceeding under the Iowa administrative procedure Act unless and until the board docket it as a formal proceeding. No person will be permitted to participate in the filing prior to docketing, except that the consumer advocate and any customer affected by the filing, except as limited by subrules 199—22.12(1) and 22.13(1), may submit within 20 days after the filing date a written objection to the filing and a written request that the board docket the filing, which request the

board may grant in its discretion. Such written objections and requests for docketing shall set forth specific grounds relied upon in making the objection or request.

26.5(4) Letter of transmittal. Three copies of all tariffs and all additional, original, or revised sheets of tariffs and the accompanying letter of transmittal shall be filed with the board and shall include or be accompanied with such information as is necessary to explain the nature, effect, and purpose of the tariff or additional, original, or revised sheets submitted for filing. Such information shall include, when applicable:

- a. The amount of the aggregate annual increase or decrease proposed.
- b. The names of communities affected.
- c. The number and classification of customers affected.
- d. A summary of the reasons for filing and such other information as may be necessary to support the proposed changes.
- e. A marked version of the pages to be changed or superseded showing additions and deletions, if the tariff is prepared with word processing software supporting such marking. All new language must be marked by highlight, background shading, bold text, or underlined text. Deleted language must be indicated by strike-through. The marked version may be in either paper or electronic form and may be prepared manually or by word processing. When a marked version is infeasible or not meaningful, the letter or transmittal should state the reason for its omission.

26.5(5) Evidence. Unless otherwise authorized by the board in writing prior to filing, a utility must when proposing changes in tariffs or rate schedules, which changes relate to a general increase in revenue, prepare and submit with its proposed tariff the following evidence in addition to the information required in 26.5(8). The board shall act on requests for waivers not later than 14 days after filing of those requests. If no action is taken on a request for waiver, it shall be deemed denied.

a. Factors relating to value. A statement showing the original cost of the items of plant and facilities, for the beginning and end of the last available calendar year, any other factors relating to the value of the items of plant and facilities the utility deems pertinent to the board's consideration, together with information setting forth budgeting accounts for the construction of scheduled improvements.

b. Comparative operating data. Information covering the latest available calendar year immediately preceding the filing date of the application.

(1) Operating revenue and expenses by primary account.

(2) Balance sheet at beginning and end of year.

c. Test year and pro forma income statements. Schedules setting forth revenues, expenses, net operating income of the last available calendar year, the adjustment of unusual items, and by adjustment to reflect operations for a full year under existing and proposed rates.

d. Additional evidence for rural electric cooperatives. In addition to the foregoing evidence, a rural electric cooperative shall file schedules setting forth

utility long-term debt and debt costs, accrued utility operating margins and other components of patronage capital, the cooperative's plan to refund utility patronage credits, the ratio of utility long-term debt to retained utility operating margins, the times interest earned ratio, the debt service coverage, authorized utility construction programs, utility operating revenues from base rates, and utility operating revenues from power cost adjustment clauses.

e. Additional evidence for investor-owned utilities. In addition to the foregoing evidence, an investor-owned utility shall file, at the same time the proposed increase is filed, the following information. For the purposes of these rules, "year of filing" means the calendar year in which the filing is made. Unless otherwise specified in these rules, the information required shall be based upon the calendar year immediately preceding the year of filing.

(1) Rate base for both total company and Iowa jurisdictional operations calculated by utilizing a 13-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis, except for the cash working capital component of this figure, which will be computed on the basis of a lead-lag study as set forth in subparagraph (5).

The rate base for the Iowa jurisdictional operations of rate-regulated telephone utilities will be computed on the basis of actual month-end balances which have been verified and adjusted to reflect the results of true-up procedures. True-up is the comparison of actual usage for each deregulated service with any previous estimates of deregulated usage for a given time period

for the purpose of adjusting rate base and income statement allocations between deregulated and regulated services. Trued-up month-end balances for each deregulated service will be completed through the end of the test year prior to the date of filing a general rate case.

(2) Revenue requirements for both total company and Iowa jurisdictional operations to include: operating and maintenance expense, depreciation, taxes, and return on rate base. The Iowa jurisdictional expenses of rate-regulated telephone utilities will be adjusted to reflect allocation factors which have been computed as a result of actual month-end balances which have been verified and adjusted to reflect the results of true-up procedures. True-up is the comparison of actual usage for each deregulated usage for a given time period for the purpose of adjusting rate base and income statement allocations between deregulated and regulated services. Trued-up month-end balances for each deregulated service will be completed through the end of the test year prior to the date of filing a general rate case.

(3) Capital structure calculated utilizing a 13-month average of month-ending balances ending on December 31 of the year preceding the year of filing, and also calculated on a year-end basis.

(4) Schedules supporting the proposed capital structure, schedules showing the calculation of the proposed capital cost for each component of the capital structure and schedules showing requested return on rate base with capital structure and corresponding capital cost.

(5) Cash working capital requirements, including a recent lead-lag study which accurately represents conditions during the test period. For the purposes of this rule, a lead-lag study is defined as a procedure for determining the weighted average of the days for which investors or customers supply working capital to operate the utility.

(6) Complete federal and state income tax returns for the two calendar years preceding the year of filing and all amendments to those returns. If a tax return or amendment has not been prepared at the time of filing, the return shall be filed with the board under this subrule at the time it is filed with the Internal Revenue Service or the state of Iowa department of revenue and finance.

(7) Schedule of monthly Iowa jurisdictional expense by account as required by 199—16 of the board's rules unless, upon application of the utility and prior to filing, the board finds that the utility is incapable of reporting jurisdictional expense on a monthly basis and prescribes another periodic basis for reporting jurisdictional expense.

(8) For gas, electric and water utilities, a schedule of monthly consumption (units sold) and revenue by customer-rate classes, reflecting separately revenue collected in base rates and adjustment clause revenues. For telephone companies, a rate matrix as set forth in the company's annual report (page B-16), shall be filed along with a statement of the total amount of revenue produced under the rate matrix.

(9) Schedules showing that the rates proposed will produce the revenues requested. In addition to these schedules, the utility shall submit in support of

the design of the proposed rate a narrative statement describing and justifying the objectives of the design of the proffered rate. If the purpose of the rate design is to reflect costs, the narrative should state how that objective is achieved, and should be accompanied by a cost analysis that would justify the rate design. If the rate design is not intended to reflect costs, a statement should be furnished justifying the departure from cost-based rates. This filing shall be in compliance with all other rules of the board concerning rate design and cost studies.

(10) All monthly or periodic financial and operating reports to management beginning in January two years preceding the year of filing. The item or items to be filed under this rule include: (a) reports of sales, revenue, expenses, number of employees, number of customers, or similar data; (b) related statistical material. This requirement shall be a continuing one, to remain in effect through the month that the rate proceeding is finally resolved. Notwithstanding other provisions concerning the number of copies to be filed, one copy of each report shall be filed under this rule.

(11) Schedule of monthly tax accruals separated between federal, state, and property taxes, including the methods used to determine these amounts.

(12) Allocation methods, including formulas, supporting revenue, expense, plant or tax allocations.

(13) Schedule showing interest rates, dividend rates, amortizations of discount and premium and expense, and unamortized 13 monthly balances of

discount and premium and expense, ending on December 31 of the year preceding the year of filing, for long-term debt and preferred stock.

(14) Schedule showing the 13 monthly balances of capital stock expense associated with common stock, ending on December 31 of the year preceding the year of filing.

(15) Schedule showing the 13 monthly balances of capital surplus, separated between common and preferred stock, ending on December 31 of the year preceding the year of filing. For the purpose of this rule, capital surplus means amounts paid in that are less than or are in excess of par value of the respective stock issues.

(16) Stockholders' reports, including supplements for the year of filing and the two preceding calendar years. If such reports are not available at the time of filing, they shall be filed immediately upon their availability to stockholders.

(17) If applicable, securities and exchange commission Form 10Q for all past quarters in the year of filing and the preceding calendar year, and Form 10K for the two preceding calendar years. If these forms have not been filed with the Securities and Exchange Commission at the time the rate increase is filed, they shall be filed under this subrule immediately upon filing with the Securities and Exchange Commission. This requirement is not applicable for any such reports which are routinely and formally filed with the board.

(18) Any prospectus issued during the year of filing or during the two preceding calendar years.

(19) Consolidated and consolidating financial statements.

(20) Revenue and expenses involving transactions with affiliates and the transfer of assets between the utility and its affiliates.

(21) A schedule showing the following for each of the 15 calendar years preceding the year of filing, and for each quarter from the first quarter of the calendar year immediately preceding the year of filing through the current quarter.

Earnings, annual dividends declared, annual dividends paid, book value of common equity, and price of common equity (each item should be shown per average actual common share outstanding, adjusted for stock splits and stock dividends).

Rate of return to average common equity.

Common stock earnings retention ratio.

For common stock issued pursuant to tax reduction act stock ownership plans, employee stock option plans, and dividend reinvestment plans: net proceeds per common share issued, and number of shares issued and previously outstanding at the beginning of the year. This shall be set forth separately for each of the three types of plans, and reported as annual aggregates or averages.

For other issues of common stock: net proceeds per common share issued, and number of shares issued and previously outstanding for each issue of common stock.

(22) If the utility is applying for a gas rate increase, a schedule for weather normalization, including details of the method used.

(23) All testimony and exhibits in support of the rate filing attached to affidavits of the sponsoring witnesses. All known and measurable changes in costs and revenues upon which the utility relies in its application shall be included.

Unless otherwise required, an original plus ten copies of all testimony and exhibits, and four copies of all other information, shall be filed. Three copies of each of the preceding items shall be provided to the consumer advocate. In addition, two electronic copies of each computer-generated exhibit which complies with the standards in 199—7.7(476) and two copies of a brief description of the software and hardware requirements of noncomplying electronic copies of computer-generated exhibits shall be filed with the board and the consumer advocate. Two copies of the noncomplying electronic copies shall be provided upon request by any party or the board.

If the utility which has filed for the rate increase is affiliated with another company as either parent or subsidiary, the information required in subparagraphs (3), (4), (6), (13) to (19), and (21) shall be provided for the parent company (if any) and for all affiliates which are not included in the consolidating financial statements filed pursuant to this rule.

(24) Information relating to advertisements including:

1. A portfolio of all advertisements charged to ratepayers either produced, recorded or a facsimile thereof;
2. Cost data for all advertisements and the accounting treatment utilized; and

3. An account of total advertising expense including a breakdown of the expense by category.

f. All rate-regulated utilities shall submit at the time of filing an application for increased rates, all workpapers used to prepare the analysis and data submitted in support of the application. All workpapers shall substantially comply with the standards in subrule 199—7.10(5).

g. Additional evidence. The applicant may submit any other testimony, schedules, exhibits, and data which it deems pertinent to the application.

(1) Additional evidence may include:

1. Testimony, schedules, exhibits, and data concerning the cost of capital infrastructure investment that will not produce significant revenues and will be in service in Iowa within nine months of the test year.

2. Testimony, schedules, exhibits, and data concerning cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

(2) The utility shall specifically identify and support the information, including providing an estimate at the time of filing and addressing prudence issues, regarding the changes that will be verifiable within nine months of the test year, with such verification provided to other parties as soon as the data is available. To be considered, the verifiable information must be offered into the record prior to the closing of the record at the hearing in the proceeding.

(3) A utility electing to file additional evidence under this paragraph shall include in the reports required in subparagraph 26.5(5)"e"(1) any capital infrastructure investments that will not produce significant revenues and have been placed in service in Iowa, or capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

(4) A utility electing to file additional evidence under this paragraph shall provide additional schedules as required by subparagraphs 26.5(5)"e"(13), (14), and (15) related to capital issuances that have been completed that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

Subparagraphs 26.5(5)"g"(1) through (4) are repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if subparagraphs 26.5(5)"g"(1) through (4) had not been repealed. Upon repeal of subparagraphs 26.5(5)"g"(1) through (4), the board may still consider the adjustments addressed in those subparagraphs, but shall not be required to consider them.

26.5(6) Evidence requested by the board. The applicant shall furnish any additional evidence as ordered by the board at any time after the filing of the tariff.

26.5(7) Applications pursuant to Iowa Code section 476.6 that are not general rate increase applications. At the time a rate-regulated public utility,

other than a rural electric cooperative, files for new or changed rates, charges, schedules, or regulations except in conjunction with general rate increase applications, it shall submit the following:

- a. Any cost, revenue, or economic data underlying the filing.
- b. An explanation of how the proposed tariff would affect the rates and service of the public utility.
- c. All testimony and exhibits in support of the filing attached to affidavits of the sponsoring witnesses.

26.5(8) Requests for temporary authority pursuant to Iowa Code section 476.6.

a. A request for temporary authority to place in effect any suspended rates, charges, schedules, or regulations shall be separately identified and shall include:

(1) For each adjustment or issue, a brief explanation of the adjustment or issue and its purpose which includes the specific regulatory principles relied on to support the adjustment or issue and citations to either the rules, statutes, or decisions in which the regulatory principle was codified or previously applied.

(2) Schedules supporting the proposed temporary rate capital structure, schedules showing the calculation of the proposed capital cost for each component of the capital structure, and schedules showing requested return on rate base with capital structure and corresponding capital cost.

(3) All workpapers supporting the request for temporary authority. The workpapers shall substantially comply with the standards in subrule 199--7.10(5).

b. Within 30 days of the filing of a request for temporary authority, an objection may be filed. An objection to a request for temporary authority shall separately identify each disputed adjustment or issue and shall include:

(1) A brief explanation of the basis for the disputed adjustment or issue which includes the specific regulatory principles relied on and citations to either the rules, the statutes, or decisions in which the regulatory principle was codified or previously applied.

(2) All workpapers supporting the objection to the request for temporary authority. The workpapers shall substantially comply with the standards in subrule 199—7.10(5).

c. Within 15 days of the filing of the objection, the utility may file a reply.

d. For this rule, the following filing requirements apply:

(1) Request for temporary authority—original plus ten copies.

(2) Objections to request—original plus ten copies.

(3) Replies—original plus ten copies.

(4) Exhibits—original plus ten copies. In addition, two electronic copies of each computer-generated exhibit shall be filed. Only electronic copies of computer-generated exhibits that comply with 199—7.7(476) shall be filed.

(5) Electronic workpapers—two copies and two hard-copy printouts.

(6) Other workpapers—five copies.

(7) Specific studies or financial literature—two copies. In addition, three copies of each document filed shall be provided to consumer advocate.

199—26.6(476) Answers.

26.6(1) Time for. Answers to applications for new or changed rates, charges, schedules, or regulations shall be permitted only if and when the application is docketed as a formal proceeding by the board, and shall be filed with the board within 20 days after the date of docketing. All answers must specifically admit, deny or otherwise answer all material allegations of the pleadings and also briefly set forth the affirmative grounds relied upon to support such answer; except that a party's failure to file an answer to an application for new or changed rates, charges, schedules, or regulations will be deemed a denial of all allegations of the application.

26.6(2) Motion to dismiss. Motions to dismiss applications for new or changed rates, charges, schedules, or regulations shall be permitted only if and when the application is docketed as a formal proceeding by the board.

199—26.7(476) Rate investigation. The board shall commence a rate investigation upon the motion of the general counsel or the consumer advocate alleging that a rate-regulated utility's annual report, a special audit, or an investigation by the board staff or the consumer advocate, indicates that the earnings of that public utility may have been or will be excessive. The board may also commence a rate investigation upon the motion of any interested person.

199—26.8(476) Procedural schedule in Iowa Code sections 476.3 and 476.6 proceedings.

26.8(1) In any proceeding initiated as a result of the filing by a public utility of new or changed rates, charges, schedules or regulations, the utilities board or

presiding officer shall set a procedural schedule based on the following guidelines, unless otherwise ordered by the utilities board or presiding officer pursuant to this rule. The times and places of consumer comment hearings shall be set at the discretion of the utilities board or presiding officer.

Prepared direct testimony and exhibits in support of the filing—date of initial filing.

Docket case as a formal proceeding, suspend effective date of new or changed rates, charges, schedules or regulations and establish procedural schedule—not later than 30 days from the date of initial filing.

All further testimony—completed not later than six months from date of initial filing.

Cross-examination of all testimony—completed not later than seven months from date of initial filing.

Briefs of all parties—filed not later than eight and one-half months from date of initial filing.

26.8(2) In a proceeding initiated as a result of the filing of a complaint pursuant to Iowa Code section 476.3, the utilities board or presiding officer shall set a procedural schedule based on the following guidelines, unless otherwise ordered by the utilities board or presiding officer pursuant to this rule.

Prepared direct testimony and exhibits in support of the filing—date of initial filing.

Docket case as a formal proceeding to suspend effective date of new or changed rates, charges, schedules or regulations and establish procedural schedule—not later than 30 days from the date of initial filing.

All further testimony—completed not later than six months from date of initial filing.

Cross-examination of all testimony—completed not later than seven months from date of initial filing.

Briefs of all parties—filed not later than eight and one-half months from date of initial filing.

26.8(3) In setting the procedural schedule in a case, the board or administrative law judge shall take into account the existing hearing calendar and shall give due regard to other obligations of the parties, attorneys and witnesses. The board or administrative law judge may on its own motion or upon the motion of any party, including consumer advocate, for good cause shown change the time and place of any hearing. Any effect such a change has on the remainder of the procedural schedule or the deadline for decision shall be noted when the change is ordered.

26.8(4) Additional time may be granted a party, including consumer advocate, upon a showing of good cause for the delay, including but not limited to:

- a. Delay of completion of previous procedural step.
- b. Delays in responding to discovery or consumer advocate data requests.

Any effect such an extension has on the remainder of the procedural schedule or the deadline for decision shall be noted in the motion for extension and the board order granting the extension.

26.8(5) If any party, including consumer advocate, wishes to utilize the electric generating facility exception to the ten-month decision deadline contained in Iowa Code section 476.6, it shall expeditiously file a motion seeking this exception including an explanation of that portion of the suspended rates, charges, schedules or regulations necessarily connected with the inclusion of the generating facility in rate base. Any other party may file a response to such a motion.

199—26.9(476) Consumer comment hearing in docketed rate case of an investor-owned utility company. The board shall hold consumer comment hearings to provide an opportunity for members of the general public who are customers of an investor-owned utility company involved in a docketed rate case to express their views regarding the case before the board as well as the general quality of service provided by the utility. However, specific service complaints must follow the procedure prescribed in 199—6.2(476). Nothing shall prohibit the board from holding consumer comment hearings on any other docketed rate case.

26.9(1) The consumer comment hearing will be presided over by either the board member(s) or an administrative law judge assigned by the board. Representatives from the utility company shall be present to explain, in a concise manner, the pertinent points of the company's proposal. The company's

representatives shall also respond to any questions directed to them. All representatives from the utility company that are participating, except for legal counsel, shall be under oath. All board staff members that are participating in the hearing shall be under oath.

26.9(2) Individuals who wish to testify at the consumer comment hearing need not preregister with the board but need only sign up at the time of the hearing. The board member(s) or administrative law judge may limit the length of testimony when a large number of persons wish to testify. Sworn testimony shall become a part of the permanent record of the rate proceeding.

26.9(3) All participants in the hearing may correct misinformation within testimony. Correction of misinformation may be made at the time of the hearing during oral presentation or, if the misinformation does not come to the attention of the participants until after the hearing, correction of misinformation may be submitted in writing to the board within 20 days after the oral presentation. Written submissions shall be limited to a statement identifying the party whose testimony is to be corrected, and a brief statement of the incorrect testimony. This shall be followed by a brief statement of the correct information. This procedure shall be utilized to correct only such information that is clearly erroneous. Written submissions of corrections of misinformation shall not be used to slant, clarify or add to the testimony given during oral presentation. Corrections of misinformation which comply with this rule shall become a part of the permanent record.

The consumer comment hearing is not an appropriate forum for any party to make a record for or against the rate case.

26.9(4) The consumer comment hearing shall be held in a major population center served by the utility company at a time of day convenient to the largest number of customers. It shall be conducted in a facility large enough to accommodate all who wish to attend. Notice of the consumer comment hearing shall be sent by the board's public information office to newspapers, radio, and television stations in the area served by the utility company.

26.9(5) Individuals unable to attend a consumer comment hearing may submit written comments to the board. Written comments shall become part of the permanent file of the rate proceeding, but not part of the record as sworn testimony.

26.9(6) Consumer comment hearing may be waived by the board if the interests of the public are better served without a hearing.

This rule is intended to implement Iowa Code sections 474.5, 476.1 to 476.3, 476.6, 476.8, 476.10, 476.31 to 476.33.

199—26.10(476) Appeal from administrative law judge's decision. When an appeal is taken from an administrative law judge's decision determining the reasonableness of rates after formal docketing of the proceeding pursuant to Iowa Code section 476.6, the filing of a notice of appeal in compliance with this rule may be deemed a request for additional time to complete the proceeding, for good cause shown and, if the board so determines, shall extend the date when any rates approved on a temporary basis become permanent for a period not to

exceed one-half of the additional time, shown in the procedural schedule, for a final board decision on the appeal.

199—26.11(476) Consideration of current information in rate regulatory proceedings.

26.11(1) Test period. In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider the use of the most current test period possible in light of existing and verifiable data respecting costs and revenues available as of the date of commencement of the proceedings.

26.11(2) Known and measurable changes. In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider:

a. Verifiable data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue and known and measurable revenues not associated with a different level of costs, that are to occur within 12 months after the date of commencement of the proceedings.

b. Data which becomes verifiable prior to the closing of the record at the hearing respecting known and measurable:

(1) Capital infrastructure investments that will not produce significant additional revenues and will be in service in Iowa within nine months after the conclusion of the test year.

(2) Cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that

has been the subject of a ratemaking principles proceeding pursuant to Iowa Code section 476.53.

Verifiable data filed pursuant to paragraph 26.11(2)"b" shall be provided to other parties as soon as the data is available so that other parties have a reasonable opportunity to verify the data to be considered by the board.

Paragraph 26.11(2)"b" is repealed effective July 1, 2007. However, any proceeding that is pending on July 1, 2007, that is being conducted pursuant to Iowa Code section 476.3 or 476.6 shall be completed as if paragraph 26.11(2)"b" had not been repealed. Upon repeal of paragraph 26.11(2)"b," the board may still consider the adjustments addressed in the paragraph, but shall not be required to consider them.

26.11(3) Postemployment benefits other than pensions. For rate-making purposes, the amount accrued for postemployment benefits other than pensions in accordance with Financial Accounting Standard No. 106 will be allowed in rates where:

a. The net periodic postemployment benefit cost and accumulated postemployment benefit obligations have been determined by an actuarial study completed in accordance with the specific methods required and outlined by SFAS No. 106.

b. The accrued postemployment benefit obligations have been funded in a board-approved, segregated and restricted trust account, or alternative arrangements have been approved by the board. Cash deposits shall be made to the trust at least quarterly in an amount that is proportional and, on an annual

basis, at least equal to the annual test period allowance for postemployment benefits other than pensions.

c. The transition obligation is amortized over a period of time determined by the board that does not exceed 20 years.

d. Any funds, including income, returned to the utility from the trust not actually used for postemployment benefits other than pensions shall be refunded to customers in a manner approved by the board.

e. The board finds the benefit program and all calculations are prudent and reasonable.

26.11(4) An actuarial study of the net periodic postemployment benefit cost and accumulated postemployment benefit obligations shall be determined and filed with the board at the time a rate increase is requested, when there has been a change in postemployment benefits other than pensions offered by the utility, or every three years, whichever comes first.

26.11(5) For a period not to exceed three years commencing January 1, 1993, a rate-regulated utility may record on its books each year as a deferral the difference between the amount accrued in accordance with SFAS 106 and the amount which would have been recorded for postemployment benefits other than pensions on a pay-as-you-go basis for that year. In calculating the amount to be deferred, the utility may include in the deferral the amortization of transition obligation costs in accordance with SFAS 106.

26.11(6) Recovery of the deferrals authorized in subrule 26.11(5) will be considered only in rate cases filed prior to December 31, 1995.

This rule is intended to implement Iowa Code sections 476.1 to 476.3, 476.6, 476.8, 476.10 and 476.31 to 476.33.

199—26.12(476) Rate regulation election—electric cooperative corporations and associations.

26.12(1) Application of rules. Electric cooperative corporations and associations shall not be subject to the jurisdiction of the utilities board except as provided in Iowa Code section 476.1A and paragraphs “a,” “b,” and “c” of this subrule.

a. Procedure for election by members. Upon petition of not less than 10 percent of the members of an electric cooperative or upon its own motion, the board of directors of an electric cooperative shall order a referendum election to be held to determine whether the electric cooperative shall be subject to the jurisdiction of the utilities board. A petition for election shall be completed within 60 days of commencement.

(1) Any member of an electric cooperative desiring a referendum election shall sign a petition for election addressed to the board of directors of an electric cooperative, in substantially the following form:

PETITION FOR ELECTION

TO: (Board of Directors of subject electric cooperative)

The undersigned members request you call an election to submit to the members the following proposition:

Shall . . . (name of the electric cooperative) be subject to rate regulation by the utilities board?

Signature Address Date

(2) Where signatures are made on more than one sheet, each sheet of the petition shall reproduce above the signatures the same matter as is on the first sheet. Each petitioner shall sign their name in their own handwriting and shall write their address and the date on which they signed.

(3) The petition shall be filed with the board of directors of the electric cooperative and an election shall be held not less than 60 days nor more than 90 days from the date on which the petition was filed.

(4) On the election date, the board of directors of the electric cooperative shall mail by first-class mail to each member of the electric cooperative a ballot containing the following language:

Shall . . . (name of the electric cooperative) be subject to rate regulation by the utilities board?

☐ Yes ☐ No

(5) The ballot shall also contain a self-addressed envelope to return the ballot to the secretary of the board of directors of the electric cooperative. The ballot shall be dated when received by the secretary. The ballot must be received by the secretary not more than 30 days after it was mailed to the members. The election procedure shall require a signature form for verification, but shall not allow the signature to be traced to the vote of a particular member.

(6) The issue in the election shall be decided by a majority of the members voting whose ballots are received by the secretary. Fifty-one percent of the membership shall constitute a quorum for the election. The secretary shall certify the results of the election and file the results with the executive secretary of the utilities board within 30 days of the election.

b. Procedure for election by board. Upon the resolution of a majority of the board of directors of an electric cooperative, the board may elect to be subject to the jurisdiction of the utilities board. The secretary of the board of directors of the electric cooperative shall file a certified copy of the resolution with the executive secretary of the utilities board within 30 days of the adoption of the resolution.

c. Effective date. Upon the resolution of a majority of the board of directors of an electric cooperative or when a majority of the members voting vote to place the cooperative under the jurisdiction of the utilities board, the utilities board shall determine an effective date of its jurisdiction which shall be not more than 90 days from the election. On and after the effective date of jurisdiction, the cooperative shall be subject to regulation by the utilities board.

d. Prohibited acts. Funds of an electric cooperative shall not be used to support or oppose the issue presented in the election. Nothing shall prohibit a letter of explanation and direction from being enclosed with the ballot.

e. Procedure for exemption. After the cooperative has been under the jurisdiction of the utilities board for two years, the members may elect to remove the cooperative from under the jurisdiction of the utilities board in the same manner as when electing to be placed under the jurisdiction of the utilities board.

f. Frequency of election. An electric cooperative shall not conduct more than one election pursuant to this subsection within a two-year period.

26.12(2) Rate increase considerations—rural electric cooperatives. The board's consideration of the fair and reasonable level of rates necessary for rural electric cooperatives shall include the following:

a. After investigation of the historical test year results and pro forma adjustments thereto, the board shall determine the extent to which the applicant has met the following conditions:

(1) Revenues are sufficient for a times interest earned ratio of from 1.5 to 3.0 for coverage of interest on outstanding utility short-term and long-term debt; or

(2) Revenues are sufficient for a debt service coverage ratio of from 1.25 to 2.50 on utility long-term debt; or

(3) Utility operating margins are sufficient for a ratio of from 1.5 to 2.5 of utility operating margins to interest on utility short-term and long-term debt; or

(4) Utility operating margins are sufficient for a ratio of from 1.25 to 1.75 of utility operating margins plus utility depreciation, all divided by utility long-term interest plus principal; and

(5) Utility operating margins are sufficient to return utility patronage capital credits accumulated from utility operating margins, with a retention of such credits of no more than 20 years allowed, subject to modification where compelling circumstances require time period adjustments.

b. In addition to the information in "a" above, evidence of the necessity for the requested rate relief may include, but need not be limited to, utility operating

margins which will enable the cooperative to attain and maintain a reasonable ratio of utility long-term debt to retained utility operating margins. Cooperative's authorized construction program and an official policy statement of its board of directors on a desired ratio will be considered factors in the determination of the reasonableness of any such ratio.

c. The utilities board's initial decision will become final 15 days following its date of issuance; however, if filed within that 15-day period, allegations of error by the cooperative, staff or any intervenor as to the utilities board's findings of fact, together with a statement of readiness to present testimony, will serve to hold final disposition in abeyance pending the scheduling and completion of an evidentiary hearing. When such allegation is made, testimony in support of such position must be filed within 30 days of such filing. Upon receipt of the testimony, the utilities board will schedule additional filing dates and set the matter for hearing. When hearing is scheduled, final disposition of the rate proceeding will be accomplished under the contested case provisions of the Iowa administrative procedure Act and the utilities board's rules and regulations thereunder.

These rules are intended to implement Iowa Code sections 474.3, 474.5, 474.6, 476.1 to 476.3, 476.6, 476.8 to 476.10, 476.15, 476.31 to 476.33 and 546.7.

Item 3. Amend 199—subrule 32.9(4) as follows:

32.9(4) Intervention. Notwithstanding the provisions of 199 ~~IAC 7.2(8)~~ – 7.13(1) regarding the time to petition to intervene, a party may petition to

intervene subsequent to the filing of an application for reorganization, but no later than a date for intervention established by the board in a notice of hearing.

January 26, 2005

/s/ Diane Munns
Diane Munns
Chairman